IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.3371 of 2005

Dr.J.J.Magdum Charitable Trust ..Petitioner

vs.

1. Secretary, Ministry of Healtha
and Family Welfare and ors. ..Respondents

Shri T.S.Ingale for petitioner.
Shri M.I.Sethna with Shri A.M.Sethana for respondent no.1.
Shri S.S.Pakale for respondent no.2
Shri Bhushan Kakade, A.G.P. for respondent no.3
Shri Sarang Aradhye for respondent no.4.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUD JJ.
2nd September,2005

P.C.

. Rule. Learned Counsel appearing for the respondents waive service. By consent, rule is made returnable forthwith.

2. The petitioner is a public charitable Trust registered under the Bombay Public Trust Act, 1950. The respondent no.1 is the Secretary, Ministry of Health and Family Welfare, Govt. of India. The respondent n.2 is the Central Council of Indian Medicine (for short CCIM) constituted under the provisions of Indian Medicine Central Council Act, 1970. The respondent no.3 is the State of Maharashtra. The respondent no.4 is the University of Health Sciences established under the

Maharashtra University of Health Sciences Act, 1998. The petitioner has its main aim and objects to establish educational institutions, Colleges, Health Centers, Hospitals and Medical Research Centers. The petitioner Trust has established 100 bedded Ayurvedic hospital at Jaisingpur, Taluka Shirol, District Kolhapur. In or about January, 2000 the petitioner applied for permission to start a new Ayurvedic Medical College for Women at Jaisingpur. The respondent no.3, Government of Maharashtra, after making due enquiry and scrutiny of the application, by its letter dated 28th March, 2000 issued No Objection Certificate (NOC) for starting a new Ayurvedic Medical College for Women at Jaisingpur. The respondent No.4 University also vide its letter dated 29th April, 2000 issued NOC to open a new Ayurvedic Medical College for Women by the petitioner Trust. Thereafter the respondent no.2 CCIM conducted inspection of the petitioner's Institution and by letter dated 9th July, 2001 CCIM granted permission to the petitioner to make admissions to the First Year of BAMS Course for the year 2001-2002 with an intake capacity of 40 seats. The State Government by its letter dated 18th July, 2001 granted to the petitioner Trust permission to start the new Ayurvedic Medical College for Women for the year 2001-2002 on "no grant basis" on the

terms and conditions mentioned therein.

3. Pursuant to the various permissions granted in favour of the petitioner to open new Ayurvedic Medical College for Women, the petitioner established the Ayurvedic Medical College with necessary equipments, facilities, laboratory, library etc. The petitioner also appointed teaching and non teaching staff for the college. As per the norms laid down the petitioner applied to the respondent no.4 University for "First Time Affiliation" to the petitioner college. The Local Expert Committee duly appointed by the University visited the petitioner institution on 9th June, 2001 and 29th July, 2001 and inspected the institution to assess the teaching and infra structure facilities and submitted its report. The Academic Council of the University by its letter dated 1st July, 2001 directed the petitioner to comply with the deficiencies pointed out by the Local Enquiry Committee and submit the compliance report. The petitioner by its letter dated 26th August, 2001 submitted the compliance report. It appears that the University asked the petitioner to resubmit the said report and accordingly it was resubmitted. As the University failed to take necessary action for granting affiliation for the

Academic Year 2001-2002, the petitioner Trust was constrained to apply to the CCIM for continuation of the approval for admission to First Year B.A.M.S. course for the Academic Year 2002-2003 and CCIM vide its letter dated 15th January, 2002 directed the petitioner Trust to obtain the affiliation from respondent no.4 University for the Academic Year 2002-2003 in the first instance and then apply to the Council for continuation of approval. The petitioner was also asked to make payment of the revised fee for recognition of Rs.20,000/- per year and the petitioner accordingly deposited the said amount.

4. The application made by the petitioner for affiliation was considered by the respondent no.4 University and the University vide its letter dated 26th September, 2002 informed the petitioner that the Academic Council at its meeting held on 25th September, 2002 decided not to grant First Time Affiliation to the petitioner’s College. It appears that this decision was taken on the basis of the perspective plan which was brought into force by the University for the period 2001-2006. The petitioner made fresh applications on 7th September, 2003 and 20th September, 2003 to consider its request for affiliation for the

Academic Year 2004-2005 and paid the necessary fees but the University refused to grant affiliation on the ground that the college is not covered by the perspective plan. The petitioner,therefore, approached this Court by way of filing Writ Petition No.3679 of 2004 inter alia seeking to quash the decision of the University refusing to grant affiliation to the petitioner's college on the ground of perspective plan and also sought order and direction to the University to grant affiliation to the petitioner institution for Academic Year 2004-2005. The Division Bench by the judgment and order dated 20th July 2004 was pleased to hold that the University was not right in rejecting the application on the ground of college being not covered by the perspective plan and quashed and set aside the impugned communication dated 26th September 2002 and directed the University to consider the application made by the petitioner for First Time Affiliation expeditiously after receiving permission from CCIM and State Government and after removing the deficiencies, if any.

5. Pursuant to the decision of this Court, the petitioner duly applied to respondent no.3, Govt. of Maharashtra, for permission to its Ayurvedic

College and the Govt. of Maharashtra by its letter dated 23rd August, 2004 informed the petitioner that the permission granted earlier on 18th July, 2001 is continued further and the petitioner should obtain necessary permission from CCIM for admissions during the Academic Year 2004-2005. The petitioner also applied to CCIM for continuation of the permission granted earlier vide letter dated 17th August, 2004. The CCIM by its letter dated 28th October, 2002 informed the petitioner that the Committee of CCIM will visit the petitioner's Ayurvedic college on 29th October, 2004 and submit its report about the infrastructure and facilities therein. The petitioner was asked to make payment of Rs.40,000/- towards continuation of permission applied by Demand Draft and accordingly the amount was deposited. On 29th October, 2004 the Committee visited the college and submitted its report to CCIM and Union of India for further action. The respondent no.1 vide his communication 12th April, 2005, however, informed the petitioner that the petitioner's application regarding continuation of approval/grant of permission was examined in the Department and the opinion of the Ministry of Law and Justice was also solicited. The Ministry of Law and Justice has advised that as the petitioner's college did not have valid permission

on 7th November, 2003 i.e. when section 13A of the Indian Medicine Cnetral Council Act came into force and as such it cannot be said that the petitioner's college was an existing college on the said date. Therefore, the petitioner's college needs to be treated as a new college and the petitioner is required to apply under the provisions of sec.13A of the said Act and prevalent regulations for grant of permission of the Central Govt. and advised the petitioner to submit the application along with relevant documents and application fee, if so desired, on or before 30th April, 2005. The legality and validity of this communication from the respondent no.1 is questioned in this petition under Article 226 of the Constitution of India.

6. Shri Ingale, learned Counsel appearing for the petitioner, strenuously contended that the petitioner college being granted permission by the respondent no.2 CCIM way back in the year 2001 and the College having been established much prior to the Amendment Act, 2003 which came into force on 7th November, 2003, the provisions of section 13A of Indian Medicine Central Council Act are not applicable to the petitioner but the petitioner's case squarely falls under section 13-C of the said Act. Shri Ingale contended that the respondent

no.1 has asked to apply afresh under the new provisions on totally erroneous ground that the college did not have valid permission on 7th November, 2003 i.e. when section 13A came into force. The learned Counsel submitted that under the unamended provisions of the said Act there was no provision for making application for recognition and seeking permission of the Central Govt. and CCIM. Those provisions were brought for the first time by the amendment of 2003 and the petitioner being on existing institution is exempted from making application by virtue of section 13-C of the Act. In reply, Shri Sethna and Shri Pakale, learned Counsel appearing for Union of India and CCIM respectively contended that even after granting NOC by the University and permission by the Central Council for admission of 40 students during the Academic Year 2001-2002 the admissions were not made in the petitioner college as the University did not provide affiliation to the college based on its perspective plan. Therefore, according to the learned Counsel, the petitioner college cannot be said to be an existing institution within the meaning of sec.13-C and the petitioner is obliged to seek permission of the Council in terms of sec.13A of the Act.

7. In order to appreciate the controversy it is necessary to notice few statutory provisions. The Indian Medicine Central Council Act, 1970 has been enacted by the legislature with a view to provide for constitution of the Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine and matters connected therewith. Definitions are provided under Chapter I. Chapter II provides for the constitution of Central Council and its Committees. Central Council may constitute from amongst its members committees for Ayurveda, Siddha and for Unani. Chapter III provides for recognition of medical qualification. Section 14 provides for recognition of medical qualifications granted by certain institutions in India. Section 15 provides for recognition of medical qualification granted by certain medical institutions whose qualifications are not included in the Second Schedule. Section 16 refers to the recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Section 17 provides for rights of person possessing qualifications included in Second, Third and Foruth Schedules to be enrolled. Section 19 of the Act provides for Inspectors at Examinations. Section 21 provides for withdrawal of recognition. Chapter IV provides

for the Central Register of India Medicine. Chapter V provides for the miscellany including the power to refer the particulars of a complaint to a Commission of Inquiry and power to make rules and regulations. Section 36 provides for making regulations in the matter.

8. At this stage it is required to be noted that the Act was amended by the Amendment Act No.51 of 2002. Section 13A was introduced with regard to recognition of medical qualifications in certain cases. The Act was further amended by Amendment Act No.58 of 2003 by which section 13A was amended and so also sec.13B and Sec.13-C were introduced providing for time for seeking permission for certain existing medical colleges. Pursuant to the amendment, it is seen that prior permission is made compulsory in section 13A. This, however, applies to a new medical institution. Sec.13-B provides for adverse orders in the event of establishing without permission in terms of sec.13A of the Act. Section 13-C says that provisions of sec.13A will not apply to the existing colleges. Section 13A and 13C of the Act which are material for our purpose read as follows:

"13A: Permission for establishment of new

medical college, new course of study etc.: (1) Notwithstanding anything contained in thisAct or any other law for the time being in force:

(a) no person shall establish a medical college; or

(b) No medical college shall -

(i) open a new or higher course of study or training, including a post graduate course of study or training, which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training including a post graduate course of study or training.

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1: For the purposes of this section, "person" includes any University or a trust, but does not include the Central Government.

Explanation 2: For the purposes of this section, "admission capacity", in relation to any course of study or training, including post graduate course of study or training, in a medical college, means the maximum number of students as may be fixed by the Central Government from time to time for being admitted to such course or training.

(2) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of sub-section (3) and the Central Government shall refer the scheme to the Central Council for its recommendations.

(3) The scheme referred to in sub-section (2), shall in such form and contains such particulars and be preferred in such manner

and accompanied with such fee, as may be prescribed.

(4) On receipt of a scheme from the Central Government under sub-section (2), the Central Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned and thereafter, it may -

(a) if the scheme is defective and does not contain necessary particulars, give a reasonable opportunity to the person or medical college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Central Council.

(b) consider the scheme, having regard to the factors referred to in sub-section (8) and submit it to the Central Government together with its recommendations thereof within a period not exceeding six months from the date of receipt of the reference from the Central Government.

(5) The Central Government may, after considering the scheme and recommendations of the Central Council under sub-section (4) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or medical college concerned and having regard to the factors referred to in sub-section (8), either approve the scheme with such conditions, if any, as it may consider necessary or disapprove the scheme and any such approval shall constitute as a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or medical college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit fresh scheme and the provisions of this section shall apply to such scheme as if such scheme had been submitted for the first

time under sub-section (2).

(6) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order is communicated by the Central Government to the person or medical college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it was submitted, and, accordingly the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(7) In computing the time limit specified in sub-section (6), the time taken by the person or medical college concerned submitting the scheme, in furnishing any particulars called for by the Central Council, or by the Central Government, shall be excluded.

(8) The Central Council while making its recommendations under clause (b) of sub-section (4) and the Central Government while passing an order, either approving or

disapproving the scheme under sub-section (5) shall have due regard to the following factors, namely;

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Central Council under section 22.

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training, hospital or other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time limit specified in the scheme.

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or the increased admission capacity have been provided or would be provided within the time limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or the course of study or training by persons having recognised medical qualification.

(f) the requirement of manpower in the field of practice of Indian medicine in the medical college;

(g)any other factors as may be prescribed.

(9) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or medical college concerned."

13-B: .....

13-C: Time for seeking permission for certain existing medical colleges: (1) If any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity on or before the commencement of the Indian Medicine Central Council (Amendment) Act, 2003, such person or medical college, as the case may be, shall seek, within a period of three years from the said commencement, permission of the Central Government in accordance with the provisions of section 13A.

(2) If any person or medical college, as the case may be, fails to seek permission under sub-section (1), the provisions of section 13B shall apply, so far as may be, as if permission of the Central Government under Section 13A has been refused."

9. A bare reading of the Act as originally framed and its provisions prior to 2003 show that there

was no specific provision as such providing for prior approval in the matter of starting a new college. It was only for the first time in2002 that Amended Act would provide application for approval for new medical institution. The Act was silent with regard to the existing college. It appears that the Legislature has realised that in the mean time colleges have been established as in the present case and the Legislature has introduced section 13C providing for three years period from the commencement of the Indian Medicine Central Council (Amendment) Act, 2003 for existing colleges. Therefore, provisions of section 13C should be interpreted in the light of the fact that prior to amendment there was no provision for making application for prior permission of CCIM.

10. In our opinion, the impugned communication is based on a total misconception that the permission was necessary even under the unamended Act. In the instant case the NOC to start and establish the Ayurvedic medical college was issued by the State Govt. as well as the University in 2000. Pursuant to NOC granted by the State and University the petitioner has etablished its college, hospital, laboratory, library and also appointed teaching and non teaching staff. An application was thereafter

made to CCIM for permission to give admission in its new Ayurvedic Medical College for the first year Ayurvedic course for Academic Year 2001-2002. The college was inspected by a team of experts of the CCIM and the permission was duly accorded by CCIM to the petitioner to give admission in its new college for the year 2001-2002 for the intake capacity of 40 students vide letter dated 9th July, 2001. The petitioner's college was ready in all respects and the petitioner could not admit the students only due to rejection of its application for the First Time affiliation by the University. The fact that the petitioner could not give admissions for want of affiliation from the University is altogether different matter. The decision of the University to decline affiliation on the ground of perspective plan has been set aside by this Court and the University is directed to consider the application of the petitioner for the affiliation without taking into consideration the perspective plan. In the circumstances, the decision of the respondent no.1 to treat the petitioner's college as a new college within the meaning of section 13-AS is wholly unsustainable inlaw. As stated earlier, the provisions of sec.13-C were enacted by the legislature with a view to avoid any hardship or prejudice being

caused to the colleges which have been established prior to insertion of sec.13A of the Act. With regard to the existing institutions specific concession is made in terms of sec.13-C of the Act. Therefore, we have no hesitation to hold that the petitioner institution is not required to apply for permission under sec.13-A of the Act. The impugned communication dated 12th April, 2005 is accordingly quashed and set aside. The CCIM is directed to forthwith issue continuation of approval/permissionfor the first year of Ayurvedic course for the Academic Year 2005-2006. On issuance of the the letter of continuation the University shall take up the petitioner's application for grant of affiliation and after ascertaining the compliance grant affiliation to the petitioner' college.

11. Rule is made absolute in terms of the above order with no order as to costs.